

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TERRANCE D. MORTON, SR.,

Case No. 2:17-cv-01247-RFB-GWF

Plaintiff,

**FINDINGS AND RECOMMENDATION**

v.

CVS HEALTH,

Defendant.

This matter is before the court on Plaintiff's failure to comply with the court's Order (ECF No. 7). This matter is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice.

Plaintiff is proceeding in this action *pro se* and he submitted a complaint on May 3, 2017 and an amended complaint on May 23, 2017. *See* Compl. (ECF Nos. 1-1, 3). The court issued a screening order (ECF No. 4) granting Plaintiff permission to proceed *in forma pauperis* and screening the complaint pursuant to 28 U.S.C. § 1915(e). The undersigned found that Plaintiff's complaint failed to state a valid claim and allowed him until July 25, 2018, to file an amended complaint. The screening order warned Plaintiff that a failure to file an amended complaint addressing the deficiencies explained by the court would result in a recommendation to the district judge that this case be dismissed. On December 17, 2018, Plaintiff filed a second amended complaint. ECF No. 5. On March 7, 2019, the Court issued a screening order and found that Plaintiff's second amended complaint failed to cure the deficiencies identified in its previous screening order. The Court allowed Plaintiff until April 8, 2019 to file a third amended complaint.

On May 23, 2019, the court entered an Order to Show Cause (ECF No. 7) directing Plaintiff to "show cause, in writing, **no later than May 31, 2019**, why this matter should not be dismissed for a failure to file an amended complaint." Plaintiff was again warned that failure to file an

1 amended complaint would result in a recommendation to the district judge that this case be  
 2 dismissed. To date, Plaintiff has not filed an amended complaint, requested an extension of time,  
 3 or taken any other action to prosecute this case. Accordingly,

4 **IT IS HEREBY RECOMMENDED** that Plaintiff's Amended Complaint (ECF No. 5) be  
 5 DISMISSED.

6 **IT IS FURTHER RECOMMENDED** that the Clerk of the Court be instructed to close  
 7 the case and enter judgment accordingly.

8 Dated this 13th day of June, 2019.

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 10   
 11 GEORGE FOLEY, JR.  
 UNITED STATES MAGISTRATE JUDGE

12 **NOTICE**

13 This Report of Findings and Recommendation is submitted to the assigned district judge  
 14 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for  
 15 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the  
 16 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local  
 17 Rules of Practice, any party wishing to object to a magistrate judge's findings and  
 18 recommendations of shall file and serve *specific written objections*, together with points and  
 19 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.  
 20 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate  
 21 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found  
 22 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may  
 23 result in the district court's acceptance of this Report of Findings and Recommendation without  
 24 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,  
 25 failure to file timely objections to any factual determinations by a magistrate judge may be  
 26 considered a waiver of a party's right to appellate review of the findings of fact in an order or  
 27 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th  
 28 Cir. 1991); Fed. R. Civ. Pro. 72.